

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD OCTOBER 28, 2014

Agenda

PUBLIC HEARING: APPLICANT (OMNI COMMUNITY CREDIT UNION) REQUESTS SIGN DEVIATION FROM THE OSHTEMO TOWNSHIP ZONING ORDINANCE TO ALLOW TWO GROUND SIGNS, ONE MORE THAN PERMITTED FOR A FINANCIAL INSTITUTION PER SECTION 76.170 OF THE TOWNSHIP ZONING ORDINANCE. THE SUBJECT PROPERTY IS LOCATED AT 6622 WEST MAIN STREET IN THE C-LOCAL BUSINESS DISTRICT (PARCEL #3905-14-185-031).

PUBLIC HEARING: APPLICANT (DARK) REQUESTS VARIANCE FROM SECTION 66.150 OF THE OSHTEMO TOWNSHIP ZONING ORDINANCE TO ALLOW THE EXPANSION OF AN EXISTING NONCONFORMITY AND ADD 1,200 SQUARE FEET TO AN EXISTING SECOND DWELLING ON A PARCEL IN THE RR – RURAL RESIDENTIAL ZONING DISTRICT. PROPERTY IS LOCATED AT 2503 SOUTH 4TH STREET (PARCEL #3905-28-305-010).

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Monday, October 28, 2014, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Bob Anderson, Second Alternate
 Cheri Bell, Chairperson
 Lee Larson
 Millard Loy
 Neil Sikora, First Alternate
 L. Michael Smith
 James Sterenberg

Also present were Greg Milliken, Planning Director; James Porter, Attorney; Martha Coash, Meeting Transcriptionist; and five interested persons.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chairperson Bell called the meeting to order and the “Pledge of Allegiance” was recited.

The Chairperson reminded the audience about the rules regarding their participation in public hearings.

APPROVAL OF THE AGENDA

Mr. Loy made a motion to approve the agenda as presented. Mr. Smith seconded the motion. The motion was approved unanimously.

PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no comments on non-agenda items.

APPROVAL OF THE MINUTES OF OCTOBER 6, 2014

The Chairperson asked if there were any additions, deletions or corrections to the minutes of October 6, 2014. No changes were noted.

Mr. Loy made a motion to approve the minutes as presented. Mr. Smith seconded the motion. The motion was approved unanimously.

PUBLIC HEARING: APPLICANT (OMNI COMMUNITY CREDIT UNION) REQUESTS SIGN DEVIATION FROM THE OSHTMO TOWNSHIP ZONING ORDINANCE TO ALLOW TWO GROUND SIGNS, ONE MORE THAN PERMITTED FOR A FINANCIAL INSTITUTION PER SECTION 76.170 OF THE TOWNSHIP ZONING ORDINANCE. THE SUBJECT PROPERTY IS LOCATED AT 6622 WEST MAIN STREET IN THE C-LOCAL BUSINESS DISTRICT (PARCEL #3905-14-185-031).

Chairperson Bell asked Mr. Milliken to review the application.

Mr. Milliken reviewed the information that was presented at the previous meeting. He said the applicant is requesting a sign deviation on behalf of Omni Community Credit Union in order to replace their existing ground sign along West Main Street with two unique three-dimensional style pyramid signs. One of the signs will be located at the site of the existing ground sign, and one will be located adjacent to the building. Commercial uses are permitted one ground sign, and therefore the deviation request is needed.

He noted the Board reviewed this request at the September 23rd meeting. Following review and discussion, the Board tabled action following request from the applicant. The applicant has not made any revisions to the submittal and is requesting a review of the request as submitted originally.

Mr. Milliken said during the course of the previous discussion, several concerns were raised that led to the request for the application to be tabled. The application remains the same as originally submitted. The Board's focus should remain on the considerations for a deviation and whether the proposed sign program satisfies those

considerations in light of the issues that were raised during the previous discussion. He stated the first of these was the location of the site on a corner of a major roadway and an access drive and whether that creates a unique situation that warrants a second ground sign. The second issue is the location of the second sign near the building away from the road and whether that mitigates potential impacts and thus creates a unique element that warrants a deviation.

He said the subject property is located at 6622 West Main Street on the north side of West Main Street just east of 9th Street. It is an out lot of Meijer's immediately east of the entry drive to Meijer's from West Main Street across from the gas station.

Mr. Milliken explained the applicant is proposing to install two pyramid style signs on the property. The pyramids would have four triangle faces, two of which would contain 30 square feet of signage each. The pyramids are eight feet tall and internally illuminated. The front sign would be located in the same location as the existing ground sign for the credit union, which is also 60 square feet in size and 8 feet in height. The second sign would be located on an existing concrete circle that exists immediately to the southwest of the building.

In order to avoid setting an adverse precedent, there must be something unique about this request so the Board can differentiate this decision from a similar request in the future as well as from previous requests. The Board should consider the unique design and concept of the signage and particularly the proposed location of the second sign adjacent to the building rather than along a street frontage.

Chairperson Bell determined there were no questions for Mr. Milliken and asked if the applicant wished to speak.

Mr. Chris Overbeek, 6622 West Main Street, reiterated his comments from the previous meeting, noting they have unofficially surveyed community residents who did not seem to know where Omni was located even though they shop at the Meijer store located directly behind the credit union. They feel lack of visibility is a problem and that their plan will assist with making Omni more visible with artfully done signage that will be some of the nicest in the area. He said Omni is a good and committed community partner and those are the reasons they submitted the proposal as is and did not feel it should be altered.

Chairperson Bell moved to Board Deliberations after hearing no questions for the applicant from the Board.

Mr. Smith said this is still a sign in his opinion and that the Board did not choose the location for Omni. If the drive is to be considered a street in order to allow the second sign closest to the building, the ZBA would need to consider that issue.

Mr. Anderson said the issue had been tabled to allow the applicant to make changes to the proposal to better reflect the issues, but no changes were made.

Mr. Loy appreciated Omni's dedication to the community but felt the sign should go on the north side of the building. He supported the sign at the road, but not the second sign near the building, feeling it would set a precedent. If the logo were removed from the second sign, he could consider it a work of art. He noted the Omni name is on three sides of the building.

Chairperson Bell pointed out the grade of the property that causes the building to be quite low in relation to W. Main Street. She said the second sign is designed for people to see who are entering the building, and that if visibility and name identification is the issue, there are other places on the property that provide more visibility. The logo is a problem, defining the pyramid as a sign versus more of a decorative element. Attractiveness is one thing, purpose another.

Mr. Sterenberg said when he goes through the criteria for the five standards of approval, the only one he sees that applies is the uniqueness of the property. He observed that the sign on W. Main Street is almost invisible and that he wasn't sure approving the second sign would set a precedent, asking when a service road might be considered to be a street. That question might need to be answered by the ZBA. He said in his opinion this service road is a street and that two frontages allow for two signs.

Mr. Milliken said his interpretation is that a service drive is not a road, but that there are degrees of service drives. This one serves as a means to access the building and parking lot and is three lanes wide – if people did not know better they would think it is a road. It looks and feels a lot like a road. The Ordinance refers to "street frontage." He felt the ZBA could easily interpret this drive as a street; Staff had to draw a more clear distinction for administrative purposes. He felt there is merit to the request, and that the request is unique enough that granting it would not set a precedent.

Mr. Larson noted there are already three signs on the building.

Mr. Milliken said one would not be drawn to the building by the pyramid logo until on site; then the logo connects to the building. Signs on the building identify it as Omni.

Mr. Larson said his thought at the last meeting was that if the closer pyramid were reduced to a more pedestrian size it might be acceptable, but he could not approve it as submitted.

Mr. Sikora said this issue brings up important things to discuss. He did not feel the access drive was a street, wished the second sign did not have the logo in order to feel more like art, but felt as is, it could only be considered as a sign. He did not feel it adds to drawing people in and regretted Omni did not consider some of the Board's suggestions. He said it does bring up questions about the definition of sign versus art and said there is nothing compelling in the criteria or presentation to merit approval.

In response to a question from the Chairperson, Mr. Milliken confirmed neighboring property owners had been noticed regarding this request but none had contacted the Township.

Mr. Anderson said this seems like a simple problem but is not, and did not see a way around it.

The Board discussed, but was unable to come to consensus regarding whether the service drive could be defined as a street.

Chairperson Bell asked for a motion to move the issue forward.

Mr. Smith moved to deny the request from Omni for sign deviation based on the reasons identified in the previous discussions. Mr. Loy supported the motion. The Board voted 5 -2 to deny the request, with Chairperson Bell and Mr. Sterenberg dissenting.

Chairperson Bell said the next item on the agenda was a request to allow more than one dwelling on a parcel and asked Mr. Milliken to speak regarding the request.

Mr. Milliken told the Board the subject property is located at the southeast corner of 4th Street and ML Avenue. It is a 12.6 acre parcel with 660 feet of frontage on 4th Street and 297 feet of frontage on ML Avenue. The property is 1,283 feet deep, although there are four lots along the north end that front on ML Avenue creating an "L shaped parcel.

He said the property is currently improved with an existing single family dwelling near the 4th Street frontage. In addition, construction of a second dwelling was initiated towards the center of the property, east of the primary residence in 2002. That work consisted of building an underground, earthen dwelling, which was completed at that time, and served as a first phase for construction of what is intended to be the principle dwelling on the property. The applicants now seek to finish their plans for that structure.

He noted Section 66.150 of the Zoning Ordinance states that there can be no more than one dwelling on a lot, parcel, or building site within a residential district. It continues indicating that except for the Rural Residential zoning district – in which the subject property is located – if the property has over 400 feet of frontage and over twice the required area for the zoning district, a second dwelling may be added. The subject property meets those two conditions, but it is located in the Rural Residential zoning district.

Staff's research into this property showed that the second dwelling was permitted by both the Building Department and Zoning Department in 2002. Based on the information in the file and additional research, the addition of the second dwelling was permitted at that time. The property was in the Agricultural – Rural zoning district, and parcels with more than 400 feet of frontage and over 100,000 square feet of area could

have two dwellings. This parcels satisfied those criteria, and the permit for the second dwelling was approved.

However, he said, that standard was amended 2003. The zoning district was split to create the Agricultural District and the Rural Residential district, and the subject property became part of the RR district along with the majority of the impacted parcels. As a part of that process, properties in the RR district were no longer permitted to have two dwellings regardless of their size.

Mr. Milliken said the applicants now seek to finish the dwelling by building 1,200 square feet of living space on top of the existing basement dwelling. The addition would consist of one bedroom, one bathroom, a living room, and a kitchen. Because the existing basement dwelling was built in conformance to the zoning at the time but no longer conforms to the current zoning, it is considered a legal nonconformity. In accordance with Section 62 of the Township Zoning Ordinance, legal nonconformities may be continued, but may not be expanded except in conformance with the standards of the Ordinance. Because the current Ordinance does not allow for two dwellings on the subject property, expansion of the second dwelling is not permitted. It is considered an expansion of the nonconformity and requires the variance.

Mr. Milliken reviewed the standards of approval and noted that due to the size of the property, the parcel could be divided into two parcels and conform to the Ordinance requirements. In order to achieve this with the dwellings in their current locations, it would be a very awkward division. The front, older dwelling would be on a parcel with about 280 feet of frontage on 4th Street in order to get around the house and 1.5 acres. The balance of the site would remain in a second parcel with the other dwelling in order to maintain the required frontage. The result would be a narrow (+/-90 feet) throat connecting the large rear portion of the property where the new dwelling is located with the corner piece that has the frontage on 4th Street and ML Avenue.

Mr. Milliken said the Board will need to consider whether this is a reasonable arrangement or if the granting of the variance is a more reasonable approach. The applicants have indicated that the nonconforming situation is a temporary one as it will be resolved once the older, front dwelling is no longer occupied. It is not in very good condition and therefore not worth the cost of remodeling. If the variance is not granted, the earthen home in the rear can continue to be occupied and any substantial improvements to it would have to wait until the front home is removed.

He also considered the issue of substantial justice and gave examples of other somewhat similar requests, two which were denied and one that was very similar to this request that was approved.

Mr. Milliken explained the unique aspect of this request has more to do with the timing and nonconforming status of the existing dwelling. The earthen home (rear dwelling) was permitted and initiated construction in 2002. A year later, the RR zoning district was created, and the ability to have a second dwelling unit on a larger property

like this was eliminated in the RR district. Now as the applicant returns to complete the home, ZBA approval is required due to the legal nonconforming nature of the structure.

He said that for the most part, the circumstances are self-created. The applicant is seeking to expand the existing, legally nonconforming earthen dwelling on the property. That being said, the change in the ordinance that created the nonconformity was not created by the applicant.

If the variance is granted, the density on the property will not change; a second dwelling already exists. The applicants will be permitted to complete their original plans for that dwelling and finish what will eventually be the principal dwelling for the property.

He said the ZBA has previously and appropriately shown reluctance to grant variances in similar instances in the past, and careful consideration is warranted in this case. What sets this request apart from the others is the fact that the second dwelling is already there having been approved prior to the change in Ordinance. The Board should consider whether this situation (already exists, does not increase density, legal nonconformity, same owner, etc.) warrants the granting of a variance and provide substantial justice to the applicants or if an adverse precedent would be established.

Mr. Milliken recommended that if the Board were to approve the request, it be done with a condition that the applicant (in coordination with Township Staff) record an agreement at the Register of Deeds associated with this property indicating their commitment to remove the front dwelling upon completion of its occupancy and/or upon sale or transfer of ownership of the property.

Chairperson Bell asked if there were questions for Mr. Milliken.

Mr. Anderson commented the applicants were not in violation in 2003 and couldn't help that the Ordinance requirements changed.

Mr. Sterenberg confirmed with Mr. Milliken that the alternative to an allowance would require a new survey and legal description for the new alignment, which would be cumbersome and expensive, resulting in an unusual lot arrangement.

Attorney Porter agreed the result would be a "gerrymandered mess."

In answer to a question from Mr. Anderson, Mr. Milliken indicated that if approved, there should be a time period designated for demolition of the westernmost dwelling in a document to be developed and recorded with the deed once it is vacated in order to be able to track the agreement in the future.

Attorney Porter agreed, saying there could be a simple conditional restructuring covenant that would state the dwelling would be demolished within a specific time frame when it is no longer occupied.

Mr. Larson said he would support an allowance with those conditions.

Hearing no more questions from the Board, Chairperson Bell asked if the applicant wished to speak.

Mr. Howard Dark, 2503 S. 4th Street, told the Board that in 2003 his father was still alive and there was no lien on the property. They built the approved basement structure and saved for 10 years in order to finish the home. Now that they are ready, they are no longer able to do that because of the Ordinance change. They will be happy to tear down the westernmost structure, but are unable to do so presently since his mother still lives there. They are trying to convince her to move to their home since the home she lives in is in bad structural condition, and hope to be able to do that soon. As soon as his mother no longer occupies the house they will demolish it.

Mr. Sikora asked about the topography.

Mr. Dark indicated the land drops off in back. There is a swamp and pond that precludes building or putting in a driveway in the northern part of the property.

Mr. Loy said he had no problem granting the allowance given the circumstances.

There was discussion of how soon after the home is vacated that it should be demolished and what would happen if circumstances changed and the applicant or a subsequent owner might not be able to demolish the home.

Attorney Porter said in that case the owner could return to the Board but would need very good reasons to ask for a stay. He suggested wording be inserted in the agreement that if the owner did not demolish the structure within the agreed upon time frame, that the Township would have the authority to demolish and put a lien against the property. The event should be triggered by when the current occupant leaves the westernmost home on the property. He felt a reasonable amount of time for demolition would be within one year of the triggering event.

Mr. Larson said if there is a time limit imposed for demolition after vacancy and a performance guarantee and contingency plan included, he would approve. Mr. Sikora agreed.

Mr. Sterenberg said the approval hinges on the uniqueness of the situation: the change in the Ordinance in 2003, and the burdensome nature of the alternative splitting of the property and the requirement for demolition of the westernmost building.

Mr. Sterenberg moved approval of the allowance with the condition that the applicant (in coordination with Township Staff) record an agreement at the Register of Deeds associated with this property indicating their commitment to remove the front dwelling within one year of completion of its occupancy and/or within one year of sale or transfer of ownership of the property, and that failing to do so would allow the Township

to effect its removal and place a lien on the property. Mr. Loy supported the motion. The motion was approved unanimously.

ANY OTHER BUSINESS / ZBA MEMBER COMMENTS

Members noted the difficulty of trying to see material on the projection screen due to a longstanding problem that produces lines running through the image and urged that it be repaired.

Mr. Milliken indicated there would likely not be a November ZBA meeting.

ADJOURNMENT

Chairperson Bell noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, she adjourned the meeting at approximately 3:55 p.m.

Minutes prepared:
October 31, 2014

Minutes approved:
January 27, 2015